

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
DAVID HALL, et al.	:	NO. 06-002-01

MEMORANDUM

Bartle, C.J.

July 26, 2006

Defendant David Hall ("Hall"), in this three-defendant indictment, has been charged with conspiracy to possess with intent to distribute cocaine, as well as with possession with intent to distribute cocaine and possession with intent to distribute cocaine within 1,000 feet of a school. 21 U.S.C. §§ 846, 841(a)(1), (b)(1)(B), 860(a) and 18 U.S.C. § 2. The Government has filed a motion in limine under Rule 404(b) of the Federal Rules of Evidence to "admit significant cash payments by defendant Hall and other unexplained cash, and tax records."

The Government alleges that on September 6, 2005 police observed co-defendant Ronald Austin beside a parked car. He was holding a brick-sized package wrapped in duct tape. As a result of the police officers' experience, they believed the package to contain illegal narcotics. After exiting the police vehicle, the officers saw two similarly wrapped packages and a handgun inside the parked car. According to the Government, the officers also

witnessed defendant Hall attempting to leave the rear seat of the car and arrested him at that time.

The Government seeks to admit into evidence Hall's cash payment of \$39,690 to his attorney on or about December 30, 2005, as well as evidence of his non-filing of tax returns from 2000 through 2005. Additionally, the Government seeks to admit evidence that Hall had on his person the following amounts of cash at the time of three prior arrests by Philadelphia police: \$1,802 on March 13, 2004; \$2,000 on May 20, 2005; and \$1,818 on June 21, 2005.¹

It is well established law in narcotics cases that a defendant's possession of significant amounts of cash or large cash expenditures, combined with defendant's tax returns or evidence of the non-filing of tax returns, are admissible as circumstantial evidence tending to show that the defendant possessed a large amount of cash without a legitimate source. See United States v. Chandler, 326 F.3d 210, 215 (3d Cir. 2003); see also United States v. Cooley, 131 Fed. Appx. 881, 883 (3d Cir. 2005). Under Rule 403 of the Federal Rules of Evidence, however, relevant evidence "may be excluded if its probative

1. Police reports indicate that when defendant Hall was arrested on September 6, 2005 he was carrying \$1,413 in cash. He told police that he was unemployed. The Government does not move to admit into evidence defendant's possession of \$1,413 at the time of his arrest and we do not consider this issue here.

value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury."

We are particularly troubled by the Government's motion as it pertains to the money defendant Hall has paid to his attorney to represent him. Hall argues that introduction of such evidence would interfere with his right to the assistance of counsel under the Sixth Amendment. See United States v. Gonzalez-Lopez, 126 S. Ct. 2557, 2562 (U.S. 2006). We need not decide any constitutional issue which defendant has raised. We agree with him that the admission of this evidence would be highly prejudicial to him and would greatly outweigh any probative value. It is thus barred under Rule 403. The jury, in our view, could not help but to consider this large cash payment as adversely affecting Hall's character and to draw an adverse inference against him on the issue of guilt.

We are equally unwilling to admit evidence of Hall's possession of approximately \$2,000 in cash on three different past arrests. The most recent of these arrests was almost three months prior to the arrest leading to the current charges, and the most distant arrest was more than a year and a half ago. Because of this lapse in time and the lack of demonstrated connection between the current charges and the prior possession of cash, we again find this evidence inadmissible under the balancing test of Rule 403. See United States v. Zarintash, 736

F.2d 66, 72 (3d Cir. 1984). Our conclusion is the same with respect to his failure to file income tax returns. If the Government believes he has violated the criminal law in this respect, it can surely indict him.

Accordingly, we will deny the Government's motion to admit evidence of significant cash payments by defendant David Hall and other unexplained cash and tax records.

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ORDER

AND NOW, this 26th day of July, 2006, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that the motion of the government to admit evidence of significant cash payments by defendant David Hall and other unexplained cash and tax records is DENIED.

BY THE COURT:

/s/ Harvey Bartle III
C.J.